

STATE OF RHODE ISLAND
COASTAL RESOURCES MANAGEMENT COUNCIL

Oliver Stedman Government Center
4808 Tower Hill Road; Suite 3, Wakefield, RI 02879

In accordance with and pursuant to the provisions of the "Administrative Procedures Act" (Section 42-35-3 of the General Laws of Rhode Island) and the Rule and Regulations of the Coastal Resources Management Council, notice is hereby given of the intention of the Coastal Resources Management Council to change the management plans, policies, procedures and regulations of the agency regarding planning and management of the coastal resources of the State relative to Chapter 46-23 of the State of Rhode Island.

The following changes are proposed:

1. RICRMP/Management Procedures

Add New paragraph to **Section 5.1(9): Notification**

- (9) For applications that are lacking information to begin review, staff shall prepare a letter specifying the information necessary to begin the review of said applications. If no information or reply is received within thirty days, such applications shall be deemed deficient and shall not be accepted by the Council. The applicant shall be notified of this decision.

For applications that are active (accepted for review), staff may request additional information to aid in the review of said applications. If there is no communication or action on said request, staff shall prepare a letter, advising the applicant that such information shall be received within thirty days or said applications shall be canceled. If no reply is received within thirty days, the application shall be canceled by the Executive Director by letter (certified mail, return receipt requested). The file shall then be closed without prejudice to the applicant and the applicant notified as such.

Assents for activities on properties cited for a violation of the Program shall not be issued until all enforcement issues related to that property are resolved. This rule shall not apply when such applications are submitted to resolve an enforcement action, as directed by the Council's enforcement staff.

2. RICRMP/Section 100.4

Freshwater Wetlands in the Vicinity of the Coast

Revise as follows:

A. Applicability

1. A Council Assent is required for any project or activity which may alter the character of any freshwater wetland in the vicinity of the coast. Applicants are referred to the CRMC=s Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast for specific programmatic requirements.

B. Definitions

1. Incorporated herein is Rule 5.40 of the Council's Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast, where freshwater wetland means the following:

- (a) Bog, pond, marsh, swamp, river, area(s) subject to flooding, area(s) subject to storm flowage, floodway, flowing body of water, stream, intermittent stream, submergent and emergent plant communities, special aquatic sites, and shrub and forested wetland located in the vicinity of the coast;
- (b) Those areas located in the vicinity of the coast, that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions; and
- (c) Any or all wetlands located in the vicinity of the coast, created as part of, or the result of, any activity permitted or directed by the CRMC or DEM after July 16, 1971 including, but not limited to: restored wetlands; value replacement wetlands created to compensate for wetland loss such as flood plain excavations; biofiltration areas; and any wetlands created, altered or modified after July 16, 1971.

2. Coastal wetlands as defined in RICRMP Section 210.3 are incorporated herein by reference.

3. Tributary wetlands are freshwater wetlands that are connected via a watercourse to a coastal wetland and/or tidal waters. A tributary is any flowing body of water or watercourse which provides intermittent or perennial flow to tidal waters, coastal ponds, coastal wetlands or other down-gradient watercourses which eventually or immediately discharge to tidal waters, coastal ponds or coastal wetlands.

C. Findings

1. Incorporating herein by reference Rule 10.02.B of the Council's Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast, the following constitute the functions and values of freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains:

(a) Wildlife and Wildlife Habitat

Freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains are important areas for the production and diversity of wildlife. Wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains provide habitat for individual species and communities of animals and plants. Animals include both game and non-game species, which may be either obligate or facultative, and which may be permanent residents, seasonal or transient in nature. Wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains serve as travel corridors, nesting sites, feeding sites, resting sites, nursery and/or brood rearing sites, escape cover, and seasonal breeding, migration, and over-wintering habitat for wildlife. Wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains provide critical habitat for some plant and animal species, and provide habitat for rare animal and rare plant species.

(b) Recreation and Aesthetics

Freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains provide and potentially provide a variety of important active and passive recreational and aesthetic values to the general populace. Such active and passive recreational values include, but are not limited to activities such as; hunting, fishing, trapping, cross-country skiing, ice skating, boating, waterskiing, canoeing, camping, swimming, bicycling, hiking/walking, horseback riding, harvesting of natural foods or plant materials, bird watching, education and nature studies or other animal observations and photography. Aesthetic values include, but are not limited to, the wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains visual, aural and cultural qualities such as its prominence as a distinct feature in the local area, including its prominence as open space; whether the wetland, area of land within fifty (50) feet, riverbank, or flood plain is a rare type; whether the wetland, area of land within fifty (50) feet, riverbank, or flood plain actually maintains or provides suitable habitat for any rare animal or rare plant species; whether the wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains has any outstanding or uncommon geomorphologic features; and whether the wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains contains archaeological evidence or historic significance.

(c) Flood Protection

Freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains protect life and/or property from flooding and flood flows by storing, retaining, metering out, and otherwise controlling flood waters from storm events. Further, wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains control the damaging effects of flood flows by dissipating erosive forces, providing frictional resistance to flood flows, and providing shoreline anchoring values.

(d) Surface Water and Groundwater

Freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains provide and/or maintain surface and/or groundwater supplies by acting as a recharge or discharge area, or in the case of some ponds, acting as surface water reservoirs. While groundwater recharge and discharge functions and values may vary seasonally, a freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains may, either individually or cumulatively, be an important factor in replenishing ground and surface water supplies, maintaining stream flows, transporting surface waters, and storing or metering out surface waters and/or groundwater during seasons or periods of droughts.

(e) Water Quality

Freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains protect and/or maintain important water quality functions and values by nutrient retention or removal; pollution filtration; sediment removal; oxygen production; turbidity reduction; maintenance or modification of stream flow; temperature and oxygen regimes in both flowing and surface water bodies, and providing and maintaining safe drinking water supplies.

2. The functions and values herein listed further the goals and objectives of the Council's management programs for the protection and management of coastal resources.

D. Policies

1. It is the policy of the Council to prohibit the alteration, filling, removing or grading of any tributary or tributary wetland associated with a coastal wetland or open water complex. In all cases precise boundaries of these freshwater wetland complexes shall be determined through a field inspection when proposals that could impact these features are being considered.

E. Prerequisites

A water quality certificate from the Department of Environmental Management shall be a prerequisite for any application to alter pursuant to section 9.05 of the aforementioned rules and regulations.

F. Prohibitions

1. Filling, removing, or grading (RICRMP, Section 300.2) is prohibited on any tributary or tributary wetland. However, the following circumstances may be permitted by the Council:

- (a) The fifty (50) foot wetland perimeter and river bank wetland areas outside the wetland "edge" (RIFWWA, Section 2-1-20 (d) and (g)) shall not be considered part of the wetland under this section.
- (b) Filling, removing, or grading of freshwater wetlands, excluding areas regulated as coastal wetlands (RICRMP, Section 210.3) may receive relief from this prohibition in instances where filling is required to access otherwise buildable land and when no other reasonable alternatives for access exist and when the applicant has satisfied the variance burdens of proof set forth in Section 120 of the RICRMP. Buildable land shall be defined as a land area which satisfies all federal, state, and municipal requirements for the intended development. To be defined as buildable land, the intended development must also satisfy the requirements in applicable special area management plans and meet all of the Department of Environmental Management's regulations and requirements for ISDS in "Critical Resource Areas." In cases where the Council approves filling of a freshwater wetland in order to access otherwise buildable land, the applicant shall be subject to the following requirements:
 - (i) The applicant shall be required to mitigate the area of wetland lost on a 1 to 2 (1:2) area basis;
 - (ii) The wetland that is replaced shall be consistent with that which was filled;
 - (iii) The mitigation, when feasible, shall take place on-site and in an area which is hydrologically connected to the impacted wetland. When not feasible the Council shall consider other viable alternatives, including increased mitigation ratios;
 - (iv) Setback and buffer requirements shall be required for the wetland replacement area;
 - (v) Enhancement of existing wetland shall not be an acceptable form of mitigation under this section;

- (vi) When applicable, all wetland replacement projects will require the approval of the Rhode Island Department of Environmental Management, Division of Freshwater Wetlands; and,
- (vii) When applicable, the applicant shall concurrently submit applications to the RIDEM and to the CRMC so that a concurrent review of the proposed activities can occur.

2. The filling of wetlands for priority uses as regulated by the RICRMP is exempt from this prohibition.

3. RICRMP/Section 210.1 Coastal Beaches

Revise as follows:

A. Definitions

1. Coastal beaches include expanses of unconsolidated, usually unvegetated sediment commonly subject to wave action, but may also include a vegetative beach berm. Beaches extend from mean low water landward to an upland rise, usually the base of a dune, headland bluff, or coastal protection structure, pilings or foundation.

D. Prohibitions

1. The construction of new structures other than accessways, walkover structures, and beach facilities, are prohibited ~~in the setback areas established in Section 210.C.4.~~

2. The use of plastic snow-fencing is prohibited due to the hazards presented to fish, marine mammals, and other wildlife in the aftermath of a storm event.

3. Alterations to beaches adjacent to Type 1 and Type 2 waters are prohibited except where the primary purpose of the project is to preserve or enhance the area as a natural habitat for native plants and wildlife.

4. RICRMP/Section 210.2 Barrier Islands and Spits

Revise as follows:

B. Findings

(New) 4. In some cases barrier islands and spits do not have dunes associated with them. For the purposes of measuring setbacks, the feature shall be the coastal beach.

D. Prohibitions

(New) 8. All residential construction shall be setback a minimum of 50 feet. Residential construction is prohibited in the setback zone. A special exception shall be required for relief from the 50 foot setback requirement on barriers unless the activity proposed is a beach facility or walkover structure in

which case a variance from the setback provisions shall be required. A variance shall be required for relief from the setback requirement on barriers for the area that lies between the 50 foot minimum setback and any greater setback based on the annual erosion rate. No new Individual Sewage Disposal Systems shall be constructed within the 50 foot setback area (see Section 300.6.A.2 for definition of new ISDS). Walkover structures may be permitted over the dunes in order to gain access to the beach.

5. RICRMP/Salt Pond Region SAMP

Section 920.1.A.2: Policies and Regulations

Add new (j) as follows:

(j) Applications for affordable housing located within communities with approved affordable housing plans that have been submitted at the local or state levels for review after December 14, 2004 shall be subject to the requirements contained herein.

Section 920.1.B.2: Policies and Regulations

Add (New) (k) as follows:

(k) Applications for affordable housing located within communities with approved affordable housing plans that have been submitted at the local or state levels for review after December 14, 2004 shall be subject to the requirements contained herein.

6. RICRMP/Narrow River SAMP

Section 920.1.A.2: Policies and Regulations

Add new (j) as follows:

(j) Applications for affordable housing located within communities with approved affordable housing plans that have been submitted at the local or state levels for review after December 14, 2004 shall be subject to the requirements contained herein.

Section 920.1.B.2: Policies and Regulations

Add (New) (k) as follows:

(k) Applications for affordable housing located within communities with approved affordable housing plans that have been submitted at the local or state levels for review after December 14, 2004 shall be subject to the requirements contained herein.

NOTICE

These changes are considered to be routine program changes to the Federally approved Coastal Resources Management Program of Rhode Island. The CRMC will be requesting that the federal Office of Ocean and Coastal Resources Management concurs with this determination. Persons who disagree that these are routine modifications may submit written comments within three weeks of the date of the issuance of this notice to:

Betsy Nicholson
NOAA Regional Coastal Program Specialist
University of New Hampshire
Gregg Hall, Suite 148
35 Colovos Rd.
Durham, NH 03824

and

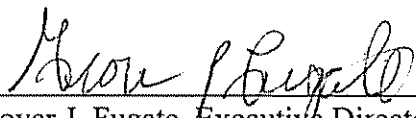
Grover J. Fugate
Executive Director
Coastal Resources Management Council
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879

The Public Hearing will be held in the Boardroom, Narragansett Bay Commission, One Service Road, Providence, RI, on Tuesday, October 11, 2005, at 6:00 p.m.

Parties interested in/or concerned with the above mentioned matter are invited to be present and/or represented by counsel at the above mentioned time and place. Individuals requesting interpreter services for the hearing impaired must notify the Council office at 783-3370, 72 hours in advance of the hearing date.

Further information may be obtained by contacting the Coastal Resources Management Council offices at 783-3370. Oral statements will be heard and recorded and statements may be submitted to hearing Officers at the time of hearing.

Signed this 6th day of September, 2005.



Grover J. Fugate, Executive Director
Coastal Resources Management Council